

Attachment 1

**Comments on the Draft Environmental Impact
Statement and Responses**

Responses to Comments

Public comments and involvement in the planning for and preparation of the Carlsbad Project Water Operations and Water Supply Conservation Environmental Impact Statement (EIS) were generally sought through communication and consultation with a variety of Federal, State, and local agencies; Native American tribes and interest groups; and the formal EIS scoping process and EIS comment process, both of which invited input from the general public.

As described in chapter 1, sections 5.9 and 5.10, the genesis of this EIS was a jeopardy determination for the Pecos bluntnose shiner (shiner) by the U.S. Fish and Wildlife Service (Service) in 1991. Since that time, Pecos River operations have been the subject of interagency research, monitoring, experimental operations, and a modeling program to determine the hydrologic and biologic needs of the shiner. After a series of attempts to initiate a National Environmental Policy Act (NEPA) process to consider changes in operations to protect the shiner and address other issues on the river, the Bureau of Reclamation (Reclamation) and the New Mexico Interstate Stream Commission (NMISC) developed an approach for environmental review of proposed Pecos River basin activities. This approach included preparing two EISs, one on water operations and another on a miscellaneous purposes contract that would allow NMISC to use Carlsbad Project water for purposes other than irrigation. Reclamation and NMISC are conducting both EIS processes concurrently and are coordinating the environmental analyses. Extensive interagency participation and some public involvement activities were undertaken before this EIS was initiated.

The Notice of Intent (NOI) to prepare the Carlsbad Project Water Operations and Water Supply Conservation Draft Environmental Impact Statement (EIS) was published in the *Federal Register* October 4, 2002. The following agencies and organizations served as cooperating and participating agencies in the preparation of the EIS. As such, they were invited to serve on the NEPA interdisciplinary team (ID team) and review committee. Representatives of these agencies also participated in technical workgroups which assisted the ID team in supporting studies and other tasks:

U.S. Fish and Wildlife Service
U.S. Army Corps of Engineers
New Mexico Department of Game and Fish (NMDGF)
Carlsbad Irrigation District (CID)
Pecos Valley Water Users Association (PVWUA)
Fort Sumner Irrigation District (FSID)
Pecos Valley Artesian Conservancy District
Chaves County Flood Control District
Guadalupe County
Chaves County

Attachment 1

De Baca County
Eddy County

Public scoping meetings were held in Santa Rosa, Fort Sumner, Carlsbad, and Roswell, New Mexico, on October 21, October 22, October 23, and October 24, 2002, respectively. These meetings provided an opportunity for the public to receive information, ask questions, and provide input. Factsheets about the project were distributed. A total of 94 members of the public attended the scoping meetings. Comments generally focused on the following: the habitat and riverflow requirements of the shiner; impacts to property owners, particularly farmers and to industries dependent upon the river; concern over water rights; dam operations; the possibility of using watershed management and brush removal to improve conditions on the river; and obtaining accurate readings to determine current flow rates prior to altering them. Details on the scoping process and results are provided in the Scoping Report (Tetra Tech, Inc., 2003a).

The DEIS was filed with the Environmental Protection Agency (EPA) on September 1, 2005, and a 60-day review period was announced in the *Federal Register*. The *River Notes* newsletter was sent to more than 450 interested members of the public, and hard copies and CDs of the DEIS and its appendices were distributed to stakeholders, agencies, and organizations. The document was posted on the project Web site, and printed copies of the DEIS and appendices were made available for public review at the offices of Reclamation, NMISC, and CID and at several libraries. Formal comments on the DEIS were taken through October 31, 2005, via mail, e-mail, and fax.

During the third week in September, Reclamation and NMISC conducted public meetings to present and invite public comments on the DEIS in Roswell (September 19), Carlsbad (September 20), Fort Sumner (September 21), and Santa Rosa (September 22). Each meeting began with an open house and an opportunity to view displays and talk to technical specialists about the issues presented in the DEIS. After a short presentation, there was a general question and answer session and another opportunity for the public to provide comments and visit with technical specialists.

Six people signed in for the meeting in Roswell. Issues included questions on critical habitat and the flows under consideration.

In Carlsbad, 15 people signed in. There were questions on the current status of the shiner, section 7 consultation, and the effects of the salt cedar eradication program on the fish, farmland, and water. Some participants expressed a preference for leasing rather than sale of water rights and stated that it was not realistic to try to maintain constant flows in the river.

Comments and Responses

In Fort Sumner, three people signed in. There was discussion about gages and the need for a gage or camera at the bottom of the critical habitat, the issue of a hatchery, and a preference for the Taiban Constant Alternative.

At Santa Rosa, three people from the town community development department attended. They have recently completed their contributions to the regional 40-year water plan and have asked that the EIS incorporate ideas from the regional water planning process. They have been doing some wetlands restoration work and may be interested in participating in reintroducing the shiner north of Sumner Dam.

Reclamation received nine comment letters or e-mails with 26 discrete comments identified. Comments were received from representatives of the Reeves Irrigation District, FSID, EPA, NMDGF, New Mexico State Historic Preservation Office, Comanche Tribe, Forest Guardians, and two individuals.

This volume contains scanned copies of the comment letters, followed by the corresponding responses to the letters. This appendix serves as the public involvement summary report of activities to date on the environmental compliance process pursuant to NEPA.

Comment FED – 1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE SUITE 1200
DALLAS, TX 75202-2733

OCT 19 2005
ORIGINAL

Ms. Marsha Carra
Bureau of Reclamation
Albuquerque Area Office
555 Broadway NE
Suite 100
Albuquerque, NM 87102

Dear Ms. Carra:

In accordance with our responsibilities under Section 309 of the Clean Air Act, the National Environmental Policy Act (NEPA), and the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA, the U.S. Environmental Protection Agency (EPA) Region 6 office in Dallas, Texas, has completed its review of the Draft Environmental Impact Statement (DEIS) for the proposed Carlsbad Water Operations and Water Supply Conservation Project, Lower Pecos River Basin, New Mexico.

EPA rates the DEIS as "LO," i.e., EPA has "**Lack of Objections**" to the proposed action as described in the DEIS. Our classification will be published in the Federal Register according to our responsibility under Section 309 of the Clean Air Act to inform the public of our views on proposed Federal actions. If you have any questions, please contact Michael Jansky of my staff at 214-665-7451 or by e-mail at jansky.michael@epa.gov.

EPA appreciates the opportunity to review the DEIS. Please send our office two copies of the FEIS when it is sent to the Office of Federal Activities, EPA (Mail Code 2252A), Ariel Rios Building, 1200 Pennsylvania Ave, N.W., Washington, D.C. 20460.

Sincerely yours,

Rhonda M. Smith, Chief
Office of Planning and
Coordination (6EN-XP)

RECEIVED BOR ALBUQUERQUE AREA OFFICE OFFICIAL FILE COPY		
OCT 27 2005		
Class	ENDS.10	
Prj	GF	
Cntr #	500241	
Fldr #	39191	
Date	Initials	Tc
		186

01

NF

Comment State – 1

GOVERNOR
Bill Richardson



DIRECTOR AND SECRETARY
TO THE COMMISSION
Bruce C. Thompson

ORIGINAL
STATE OF NEW MEXICO
DEPARTMENT OF GAME & FISH

One Wildlife Way
Post Office Box 25112
Santa Fe, NM 87504
Phone: (505) 476-8008
Fax: (505) 476-8124

Visit our website at www.wildlife.state.nm.us
For basic information or to order free publications: 1-800-862-9310.

STATE GAME COMMISSION
Guy Riordan, Chairman
Albuquerque, NM

Dr. Tom Arvas, Vice Chairman
Albuquerque, NM

Alfredo Montoya
Alcalde, NM

David Henderson
Santa Fe, NM

W. H. "Dutch" Salmon
Silver City, NM

Peter Pino
Zia Pueblo, NM

Leo Sims
Hobbs, NM

October 17, 2005

Ms. Marsha Carra
Bureau of Reclamation
Albuquerque Area Office
555 Broadway Blvd, Ste 100
Albuquerque, NM 87102

Re: Public Review Comments on Draft Environmental Impact Statement for Carlsbad Project
Water Operations and Water Supply Conservation
NMGF No. 10325

Dear Ms. Carra,

In response to the Federal Register Notice of Availability dated September 1, 2005 (70 FR 52121), regarding the above referenced project, the Department of Game and Fish (Department) would like to make several comments on the Draft Environmental Impact Statement (DEIS).

The Department is concerned about the ability of the Carlsbad Project to meet the needs of the Pecos bluntnose shiner, as stated in the Purpose and Need of the DEIS, given statements by the Bureau of Reclamation (BOR) in the draft Biological Assessment of Proposed Carlsbad Project Water Operations and Water Supply Conservation, May 9, 2005, that BOR does not possess the authority and discretion to:

- release water from storage for any other purpose than irrigation,
- purchase water to maintain habitat for the Pecos bluntnose shiner,
- construct or modify habitat for the Pecos bluntnose shiner, and
- establish storage space for anything other than irrigation.

As a member of the Water Offset Options Group (WOOG), it was clear during analysis and preparation of the DEIS that impacts to the Pecos bluntnose shiner would be mitigated through the acquisition and management of water by the Bureau of Reclamation. These options are clearly described within Chapter 2 and are common to all alternatives. Within the Biological Assessment (BA) it is clearly stated that the Bureau of Reclamation does not possess the authority and discretion to purchase water for the shiner. With these limitations on the ability of BOR to obtain, maintain, or provide water to maintain habitat in the Pecos River for the Pecos bluntnose shiner, the impacts of the Carlsbad Project water acquisition and additional water

RECEIVED BOR ALBUQUERQUE AREA OFFICE OFFICIAL FILE COPY		
OCT 20 '05		
Class	ENV 6.00	Action
Prj	CA	
Fldr #	30563	
Date	Initial	
	186	

01

Marsha Carra

Page 2

10/17/2005

acquisition options described in Chapters 4 of the DEIS cannot be considered realistic. With this change in available management options the Department can no longer support the DEIS.

01

Thank you for the opportunity to review and comment on the DEIS. If you have any questions, please contact Randy Floyd at (505) 476-8091 or randy.floyd@state.nm.us.

Sincerely,



Lisa Kirkpatrick, Chief
Conservation Services Division

LK/rlf

xc: Tod Stevenson, Deputy Director, NMGF
Janell Ward, CSD Assistant Chief, NMGF
David Propst, CSD Endangered Fisheries, NMGF
Roy Hayes, SE Area Operations Chief, NMGF
George Farmer, SE Area Habitat Specialist, NMGF

Comment State – 2



IN REPLY REFER TO:

ALB-186
ENV-1.10

United States Department of the Interior

BUREAU OF RECLAMATION

Albuquerque Area Office
555 Broadway Blvd., NE Suite 100
Albuquerque, New Mexico 87102-2352

SEP 2 2005

075456



Ms. Katherine Slick
State Historic Preservation Officer
Department of Cultural Affairs
Historic Preservation Division
228 East Palace Ave, Room 320
Santa Fe, NM 87501

Subject: Transmittal of the Bureau of Reclamation's Carlsbad Project Water Operations and Water Supply Conservation Draft Environmental Impact Statement

Dear Ms. Slick:

Enclosed is a copy of the Carlsbad Project Water Operations and Water Supply Conservation Draft Environmental Impact Statement (DEIS). The Bureau of Reclamation and the New Mexico Interstate Stream Commission (NMISC) prepared this document to assess the potential consequences of proposed changes in Carlsbad Project operations and the implementation of a water acquisition program in the Pecos River Basin, New Mexico. The proposed changes in water operations are designed to conserve the Pecos bluntnose shiner and its designated critical habitat, while conserving the Carlsbad Project water supply. The area of evaluation for the proposed action is within the Pecos River Basin from Santa Rosa Reservoir to the New Mexico-Texas state line. The water acquisition program includes a variety of options throughout the Pecos River Basin designed to help conserve Carlsbad Project water supply. The DEIS includes a description of alternative means of implementing the proposed federal action, including a No Action Alternative, and presents an evaluation of the potential environmental, economic, and social consequences that could result from implementing the alternatives.

In October 2002, your office was notified of this action and was invited to participate in scoping. The enclosed DEIS contains background material for your review. Based on our review, the changes in Carlsbad Project Water Operations proposed under all of the alternatives would result in negligible impacts on cultural resources. Sites that may occur in the immediate vicinity of the river or in flood zones have been subject to past disturbances that would reduce the likelihood of their intact preservation. Proposed flow levels, flow fluctuations, and changes in reservoir storage would be within or well below the range of normal river and reservoir operations and would not be expected to exacerbate erosion of archaeological resources or exposure of submerged resources. The potential for these kinds of impacts is greater from natural drought cycles and flood events. However, the action alternatives vary in the amount of additional water that would need to be acquired to conserve the Carlsbad Project water supply through exercise of water acquisition options. The Acme Constant Alternative would require the most water, followed by the Acme Variable, Taiban Variable, Critical Habitat, and Taiban Constant Alternatives.

Depending on which options are chosen, potential impacts on cultural resources would range from negligible to major. In most cases, the options are not sufficiently developed to define the intensity of impacts, but those options that require extensive construction are more likely to cause major impacts on

01

archaeological resources through ground disturbing actions. Alternatives that require the acquisition of higher amounts of water would permit less management flexibility in avoiding options that may impact cultural resources. In all cases, the implementation of these options would require further consideration of cultural resource impacts and completion of the National Historic Preservation Act, section 106 process for actions that are federal undertakings. Depending on the option, the identification, evaluation, effects determination, and resolution of adverse effects through the section 106 process could require extensive additional fieldwork and the possibility of project redesign to avoid cultural resources. Impacts would be expected to be reduced to negligible or minor in most cases.

In October 2002, Reclamation invited several tribes to participate on a government-to-government basis to identify concerns regarding the potential effects of our future activities on trust assets, cultural and biological resources, or tribal health and safety. Reclamation has continued and expanded this consultation to ensure that these tribes and other tribes who may have interests in the Carlsbad Project operations have the opportunity to help us identify and address any issues of importance to these groups. Based on current information, no impacts to traditional cultural properties or practices have been identified. As described previously, further actions such as the implementation of water acquisition options would require site-specific consideration and consultation with affected tribes to determine whether impacts would result.

We will gladly provide any additional information needed by you or your staff. We have enclosed a list of tribes that have been contacted on a government-to-government basis regarding Carlsbad Project operations. Please advise us if there are other parties you believe should be consulted. To provide comments, arrange a meeting, or to request additional copies of the DEIS, please contact my representative, Ms. Marsha Carra, Bureau of Reclamation, Albuquerque Area Office, 555 Broadway NE, Suite 100, Albuquerque, New Mexico 87102; telephone 505-462-3602; facsimile 505-462-3797; e-mail: mcarra@uc.usbr.gov. The DEIS is also available on the Internet at the following web address: <http://www.usbr.gov/uc/albuquerque/library/eis/carlsbad/carlsbad.html>.

Comments on the DEIS must be received by **October 31, 2005**.

Thank you for participating in this environmental review process.

Sincerely,

Connie L. Rupp

Connie L. Rupp
Area Manager

ORIGINAL
COMMENTS

Enclosures - 2

RECEIVED BOR		
BUREAU OF RECLAMATION AREA OFFICE		
OFFICIAL FILE COPY		
OCT 27 2005		
Class	ENV. 3-00	
Prj	GF	
Cntr #	5 002143	
Fldr #	39025	
Date	Initials	Tc
10/28	CR	180
11/7	JK	185
11/10	AK	187
11/14	MC	186

P.C. Young 10-21-05
for NM State Historic Preservation Officer

Thank you, we will look forward to further consultations under Section 106 of the National Historic Preservation Act as options are identified and proposed.

01

Comanche Nation
Pueblo of Isleta
Pueblo of Ysleta del Sur
Fort Sill Apache
Hopi Tribe
Navajo Nation
Jicarilla Apache Nation
Mescalero Apache Tribe
Pueblo of Jemez
Comanche Indian Tribe
Kiowa Tribe of Oklahoma
Apache Tribe of Oklahoma
Pueblo of Isleta

Comment Tribal – 1

ORIGINAL *8/04/2005-7*



RECEIVED
SEP 20 2005
ENV 600
CA
3802587
VL 10939
9/20 *[Signature]* 100
700

September 15, 2005

Rick Gold, Regional Director
Bureau of Reclamation
Upper Colorado Regional Office
125 S State St, Room 6107
Salt Lake City, UT 84138-1102

Re: Carlsbad Project Water Operations and Water Supply Conservation Draft Environmental Impact Statement

Dear Mr. Gold:

Thank you for your letter of September 1st regarding the Environmental Impact Statement for the above referenced project.

At this time, the Comanche Nation has no immediate concerns or issues regarding the project; however, please keep us informed of the project's progress. We also would like to receive any further archaeological reports and findings for the project area.

If in the process of the project human remains or archaeological items are discovered, we request that you immediately cease the project work and notify us so that we may discuss appropriate disposition with you and the other Tribal Nations that may be affected by such discoveries.

We look forward to your reports as activities proceed.

Sincerely,

Fred Nahwooksy

Fred Nahwooksy, NAGPRA Coordinator

01

PO Box 908 • Lawton, Oklahoma 73502 • PHONE: (580) 492-4988 • FAX: (580) 492-3796

Comment IRR – 1

Sheehan, Sheehan & Stelzner

ORIGINAL

John W. Blair	John W. Utton
Jaime L. Dawes	Robert P. Warburton
Craig T. Erickson	Nann M. Winter
Juan L. Flores	
David P. Gorman	
Kim A. Griffith	Of Counsel
Susan C. Kery	Briggs F. Cheney
Philip P. Larragoite	Thomas J. Horan
Shanon Riley	Pat Sheehan
Timothy M. Sheehan	Wendy E. York
Luis G. Stelzner	

October 31, 2005

Marsha Carra
U.S. Bureau of Reclamation
Albuquerque Area Office
555 Broadway NE, Suite 100
Albuquerque, NM 87102

Coleman Smith
New Mexico Interstate Stream Commission
PO Box 25102,
Santa Fe, NM 87504-5102

RECEIVED BOR ALBUQUERQUE AREA OFFICE OFFICIAL FILE COPY			
NOV 1 '05			
Class	WTR 2.00	Action	
Pri	CA		
Contr #	5002198		
Fldr #	38926		
Date	11/2/05		
Initial	MC	Tc	186
			150

Re: Comments on Draft EIS for Carlsbad Project Water Operations
and Water Supply Conservation

SHEEHAN,
SHEEHAN
&
STELZNER
P.A.
ATTORNEYS
AT LAW

Dear Ms. Carra and Mr. Smith:

On behalf of the Fort Sumner Irrigation District, I want to make a couple of brief additional comments regarding the Draft Environmental Impact Statement for Carlsbad Project Water Operations and Water Supply Conservation. FSID appreciates the transparency of this process and the parties' willingness to allow participation and comment by stakeholders such as FSID.

Regarding the Fish Conservation Pool described in Chapter 2, Sections 4.1.6 and 4.2.6, FSID has commented in the past and continues to believe that authorization of a larger pool and securing of water to fill it would aid the proposed Federal action of conserving and protecting the Pecos bluntnose shiner. FSID agrees that a larger pool would provide more flexibility and management options to respond to river conditions.

FSID has made clear that it does not intend to continue indefinitely the fallowing program currently in place under short-term agreements with the Bureau of Reclamation. Instead, FSID seeks to cooperate in securing water for an enlarged conservation pool, or other suitable method of augmentation, to replace the fallowing program. FSID is in the process of meeting with representatives of Reclamation, the

01

02

707 Broadway NE, Suite 300
Albuquerque New Mexico 87102
P.O. Box 271
Albuquerque, New Mexico 87103
505-247-0411
505-842-8890 FAX
www.ssslawfirm.com

October 31, 2005
Page 2

New Mexico Interstate Stream Commission, the State Engineer, Carlsbad Irrigation District and others to advance that objective. FSID believes that a tangible outcome of those discussions is vital to making the conservation pool effective.

Finally, in Chapter 1, Section 5.9, consistent with provisions of the current Biological Assessment for Carlsbad Project Water Operations, the first bullet point item at the top of page 1-15 should begin with the word "restrict" instead of "eliminate." That change is also consistent with the language used in the last two bulleted items in the same list.

03

Please do not hesitate to contact me if I may provide any additional explanation.

Very truly yours,

SHEEHAN, SHEEHAN & STELZNER, P.A.

BY: 
JOHN W. UTTON

JWU:ds

Comment IRR – 2

Fax sent by : 5123205638

BICKERSTAFF HEATH

10-31-05 17:14

Pg: 2/4

DELGADO,
ACOSTA &
BICKERSTAFF,
HEATH,
P.L.L.C.

October 31, 2005

Via Facsimile and Electronic Mail

Marsha Carra
U.S. Bureau of Reclamation
555 Broadway NE, Suite 100
Albuquerque, NM 87102-2352

RE: Carlsbad Project Water Operations and Water Supply Conservation
Draft Environmental Impact Statement

Dear Ms. Carra:

The following comments regarding the above referenced Carlsbad Project Water Operations and Water Supply Conservation Draft Environmental Impact Statement ("Carlsbad Project DEIS") are submitted on behalf of the Reeves County Water Improvement District No. 2 ("Reeves District"). The Reeves District is one of the seven Texas irrigation districts in the Pecos River Basin that receive water delivered by New Mexico under the Pecos River Compact and are supplied by the Red Bluff Water Power Control District. In this capacity, the Reeves District has a substantial vested interest in actions taken by the U.S. Bureau of Reclamation and the State of New Mexico that affect the quantity and quality of Pecos River water flowing downstream to Texas. Upon review of the Carlsbad Project DEIS, the Reeves District is of the opinion that certain interstate implications – and potential interstate water acquisition options – warrant further attention by the federal and state agencies conducting this environmental analysis. Specifically, the Reeves District offers the following comments:

1. The Carlsbad Project DEIS was prepared to assess the potential consequences of: a) proposed changes in Carlsbad Project operations, designed to conserve the Pecos bluntnose shiner and its designated critical habitat and to conserve the Carlsbad Project water supply; and b) the implementation of a water acquisition program in the Pecos River Basin in New Mexico. Given the interstate nature of the Pecos River Basin, however, any such federal actions must also be considered in light of the State of New Mexico's obligation under the Pecos River Compact to make annual state-line deliveries to Texas, an obligation which takes precedence over New Mexico's state water laws. (*See Texas v. New Mexico*, 482 U.S. 124 (1987)). Thus, the objectives outlined by the

01

El Paso
221 N. Kansas, Ste. 2000 • El Paso, Texas 79901
Ph. 915-544-5497 • Fax 915-544-8544

Austin
816 Congress Ave., Ste. 1700 • Austin, Texas 78701
Ph. 512-472-8021 • Fax 512-320-5638

Marsha Carra
U.S. Bureau of Reclamation
October 31, 2005
Page 2 of 3

alternative development workgroup (Carlsbad Project DEIS, at 2-3 to 2-4) should expressly include not only compliance with New Mexico State water law and water rights appropriation, but also "to act in accordance with the State of New Mexico's state-line delivery obligations to the State of Texas under the Pecos River Compact." It is not clear that the DEIS analysis has as a precondition the satisfaction of New Mexico's state-line delivery obligations.

01

2. The Water Offset Options Group (WOOG) has considered, among various water offset options for depletions to the Carlsbad Project Water Supply, Option "Z," described as "Renegotiate compact terms to enable purchase of water rights from farmers in the Red Bluff Irrigation District." (Carlsbad Project DEIS, App. 2, WOOG Doc. Report, at 3). This Option Z is included on the "B List" of Carlsbad Project water acquisition ("CPWA") options that may be used in conjunction with the action alternative chosen. The Reeves District, together with several of the other Texas irrigation districts served by the Red Bluff system, believes that the respective interests of Texas and New Mexico, and Pecos River water users in both states, would be served by negotiation of a voluntary forbearance program under which Texas landowners could opt to lease the Pecos River water deliveries that they are entitled to receive in a manner that would help to satisfy New Mexico's state-line delivery obligation under the Compact. The characterization of Option Z in the Carlsbad Project DEIS, however, miscomprehends the nature of the forbearance alternative. Specifically, that characterization assumes that amendment of the Compact terms is a prerequisite to such a forbearance program, and incorrectly describes such forbearance as a purchase of Texas water rights. The Reeves District believes that this assumption is incorrect. Compact state-line delivery obligations have been modified by mutual agreement in the past, for example, for the Malaga Bend Project, without the necessity of a Compact amendment. In this light, the Reeves District maintains that the negotiation of a Texas - New Mexico forbearance program could indeed be one of the more cost effective (and minimally disruptive to New Mexico agriculture) water acquisition options, need not be classified on the "B List" as an option not reasonably likely to provide needed water supplies within a three-year period, and should be considered for ongoing research and development.

02

03

3. The Carlsbad Project DEIS includes a detailed analysis of the current water quality of groundwater and surface water in the Pecos River Basin, principally in New Mexico, and analysis of the water quality impacts of each of the six action alternatives considered. The Reeves District believes, however, that this water quality analysis should also more fully address water quality impacts in the downstream (below Carlsbad) portion of the Pecos River Basin, including at or below the state line in Texas. The comparative impacts of not only the identified action alternatives, but also the CPWA options, should be more thoroughly analyzed in order that the most effective and efficient strategies be developed, in a manner that addresses environmental, economic, and social consequences in both New Mexico and Texas. Pecos River water quality frequently precludes its use for irrigation in Texas. Further deterioration of water quality in Texas would be a serious environmental impact, worth careful evaluation.

04

Comments and Responses

Fax sent by : 5123205638

BICKERSTAFF HEATH

10-31-05 17:14 Pg: 4/4

Marsha Carra
U.S. Bureau of Reclamation
October 31, 2005
Page 2 of 3

As stated above, the Reeves District believes that the interstate forbearance option warrants more detailed consideration, and the summary assessment of water quality impacts of the various CPWA options (Carlsbad Project DEIS, App. 4; Water Quality, Table 29) is not sufficient. If you have any questions regarding the position of the Reeves District on the Carlsbad Project DEIS, please feel free to contact me at (512) 472-8021 or by email at dcaroom@bickerstaff.com. Thank you for your consideration of these comments.

Sincerely,



Douglas G. Carroom

cc: Alan Zeman, Reeves County WID #2

Comment ORG – 1

Ms. Marsha Carra
Bureau of Reclamation
Albuquerque Area Office
555 Broadway NE, Suite 100
Albuquerque, NM 87102

October 31, 2005

Subject: Carlsbad Project Water Operations and Water Supply Conservation Draft
Environmental Impact Statement (DEIS)

Via Mail and E-Mail mcarra@uc.usbr.gov

Dear Ms. Carra:

This letter contains comments on the Bureau of Reclamation's (BOR) Draft Environmental Impact Statement (DEIS) for the Carlsbad Project Water Operations and Water Supply Conservation, submitted on behalf of Forest Guardians' more than 2,000 members and supporters who are deeply concerned about the health and well-being of rivers and the hundred species of fish and wildlife that depend on these vital waterways.

As a general matter Forest Guardians is disappointed with scope of the analysis and the inability of the BOR to make firm conclusions about some of the biological and hydrological realities that should guide and limit water management on the Pecos River. The DEIS is a reflection of the flawed thinking. Put simply, the DEIS misses its main target by not satisfying the intent or requirements of the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA).

On the other hand we are cautiously optimistic that a blueprint—in the form of both the Carlsbad Project Water Acquisitions (CPWA) and Additional Water Acquisition (AWA) alternatives—is being formulated that could result in innovative water management programs that serve water users and the endangered fish and wildlife that depend upon the Pecos River.

The National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.*, is “our basic national charter for protection of the environment,” 40 C.F.R. § 1500.1(a). NEPA’s purpose is twofold: “promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man,” 42 U.S.C. § 4321, and “help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore and enhance the environment.” 40 C.F.R. § 1500.1(c). Congress thus required the preparation and circulation for public review and comment a detailed environmental impact statement (EIS) prior to any major federal action that may have a significant effect on the environment. 42 U.S.C. § 4332(2)(C). Only in this way, Congress concluded, would an agency elevate the consideration of the environmental effects of its proposed actions to the same level as other, more traditional, factors. See *Foundation for North American Wild Sheep v. U.S. Dept. of Agriculture*, 681 F.2d 1172, 1177 (9th Cir. 1982).

This DEIS falls short of NEPA’s goals – it reflects neither a focus on the environmental effects of the action nor a decision based on understanding these effects. Therefore, BOR and

01

02

03

the Interstate Stream Commission must draft and distribute a supplemental DEIS to correct the numerous deficiencies noted in the comments below. These flaws, omissions, and incorrect analyses render it impossible for the reader, and for the action agency, to take a hard look at the environmental impacts of the proposed action, and require revision and supplementation of the DEIS. Such deficiencies include: inadequate development and description of the proposed action and alternatives, inadequate and incorrect description of the affected environment and environmental baseline, incomplete analysis of environmental impacts, unsupported conclusions, and unsound mitigation measures.

03

The Carlsbad Project Water Operations and Water Supply Conservation DEIS fails to satisfy both the spirit and letter of NEPA. Of its many failures, oversights and inadequacies, none is more egregious than its failure to meet the federal lead agency's fundamental responsibility to give appropriate consideration to the direct, indirect and cumulative effects of this proposed action:

04

1. The DEIS undervalues the Pecos River's role as the central ecological feature of the region and its status as an irreplaceable and highly threatened resource. The DEIS effectively disregards the economic, ecological and cultural importance of the river and has failed to identify and study the widely accepted need for protection, restoration and enhancement of the river. Although much is at stake, the analysis fails to adequately acknowledge the risks to the river posed by continued implementation of the Carlsbad Project.

05

There is ample evidence that water withdrawals at **present** rates are disassembling the river ecosystem. The Pecos River has been so extensively dammed, channelized and diverted, that it is now widely recognized as one of the United States' most endangered rivers. The water provided by the Pecos River is actually subject to an excess of legal claims. It often runs dry, due to over-diversion, at certain times and places. In consequence, a number of native aquatic and avian species have been extirpated from the Pecos River in recent decades, and numerous are now listed as federal endangered species. With the Pecos bluntnose shiner at the brink of extinction, it is at least conceivable that continued failure to expeditiously implement water management changes that benefit the river could spiral the species downward on a path to extinction. Instead of concerning itself with the tenuous condition of the river, the document seeks to convince the reviewer that the continued implementation of the Carlsbad Project is essentially benign, a dubious conclusion indeed.

06

2. The DEIS does not analyze a full range of alternatives. For example, an increase in the mandated river flows at the Acme Gage or an alternative that ensures that no river intermittency occurs would both be reasonable, technically feasible alternatives for actually ensuring the recovery of the Pecos bluntnose shiner. The BOR and other water users are well aware of the fact that the FWS has released a report recommending significantly higher volume flows in order to protect and conserve the shiner. Yet, the DEIS gives scant consideration, and no explicit analysis of a true shiner conservation and recovery alternative to the status quo of letting CID dictate water management. Likewise, there is little to no analysis in the DEIS of the many previously discarded alternatives which the BOR purports to have analyzed. Without providing the underlying data and scientific methodology there is no way for the document's reviewers to

07

reach their own conclusions of how the Carlsbad Project might best be operated to "prevent or eliminate damage to the environment" and recover listed species.

07

Purpose and Need

The purpose of the proposed project is to "conserve and protect the Pecos bluntnose shiner...and to conserve the Carlsbad Project water supply." (ES-2). If this is true, then no alternatives for implementing the Carlsbad Project satisfy this intent. The DEIS admits that the analyzed alternatives do not vary in any significant way from the current action, which by most objective accounts is jeopardizing the Pecos bluntnose shiner and adversely modifying its designated critical habitats.

08

Scope

The scope of this EIS is too narrow and too fragmented. Fragmented thinking is the source of many of the river's problems. Unless and until a more holistic approach is taken real recovery of the Pecos bluntnose shiner will remain elusive. According to CEQ regulations, actions should be considered in a single EIS if they are connected, cumulative, or similar. 40 C.F.R. § 1508.25. In this case, the Fort Sumner Irrigation Project water operations, and the Long-term Miscellaneous Purposes contract planning process are each interrelated and interdependent in that they are driven by the over allocation and appropriation of Pecos River water to the Carlsbad Irrigation District and Fort Sumner Irrigation District, among others.

09

They are connected because they are "interdependent parts of a larger action and depend on the larger action for their justification," cumulative because "when viewed with other proposed actions have cumulatively significant impacts," and similar because "when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together." Id.

All three projects are a part of the BOR's mission and depend on it for their existence. As part of the Bureau's Pecos River water operations, all three aim to serve irrigation interests, while complying with the Endangered Species Act and the Pecos River Compact and will take place in the same region of the river, and are thus similar. See Churchill County v. Norton, 276 F.3d 1060, 1077 (9th Cir. 2001) (calling for a single EIS when "projects in a particular geographic region are foreseeable and similar"). The DEIS's own methodology for determining cumulative impacts comes close to acknowledging this NEPA issue by first evaluating impacts of the Carlsbad Project in conjunction with these other actions. (5-8).

Development & Description of the Alternatives

Affected Environment / Environmental Consequences

Biodiversity

Riparian Areas

Threatened and Endangered Species

Water Quality

Mitigation

Thank you again for this opportunity to comment. If you have any questions or comments, please contact me at 988-9126 x153.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Horning". The signature is fluid and cursive, with the first name "John" being more prominent.

John C. Horning
Executive Director
Forest Guardians

Comment IND – 1

"Thomas H. Springer" <tombarb@lookingglass.net> 9/18/2005 4:54:36 PM >>>

Marsha ----- Just wanted you to know that the September 2005 River Notes publication is one of the best I have seen since my involvement with the EIS effort. It is clear and concise. I especially think that the section on Preferred Alternatives was very good. I had not previously seen anything about the selection criteria for the alternatives. Good job!

Speaking of the criteria for the alternatives, in my opinion, number 6 is not a good one. It seems to me that the ISC and the BOR should select the criteria that they think are best regardless of how the USFWS might react. You owe it to your clients and the public to recommend "the best" alternative as independent agencies.

01

Tom Springer

Comment IND – 2

ORIGINAL

MEMO

October 25, 2005

TO : Marsha Carra
 Bureau of Reclamation, Albuquerque Office
 555 Broadway NE, Suite 100
 Albuquerque, NM 87102

FROM: Bernice S.D'Abadie
 509 N. Atkinson Ave.
 Roswell, NM 88201
 (505) 622-3853
 Tax paying member of PVACD and Chaves Co.

BSD

RECEIVED BOR ALBUQUERQUE AREA OFFICE OFFICIAL FILE COPY			
OCT 28 05			
Class	WTR 4.03		
Prj	E.C.A.		
Cntr #	5002176		
Fldr #	30772		
Date	Initials	To	
11/2/05	mc	186	
		150	

**COMMENTS ON CARLSBAD PROJECT WATER OPERATIONS
and WATER SUPPLY CONSERVATION EIS.**

1. Will the leased water presently pumped into the Pecos River above the Acme gauge continue to be pumped after the new CPWA plan is instituted? Because the Acme area of the Pecos River is not considered under the new plan as a critical habitat of the blunt nose shiner, the presently leased water would be an ineffective way of getting water to CID in repayment for lower flows in the river to help the blunt nose shiner.

01

02

2. The draft environmental impact statement was a disappointment as it did not consider an alternative plan to preserve the Pecos blunt nose shiner in a tributary of the Pecos River. Water flow in a smaller area could likely be better controlled than the flow in the long sweep from Ft. Sumner to Artesia, NM.

03

3. Leasing water for the CPWA plan seems a better alternative than purchasing water rights. The possibility exists that the Pecos blunt nose shiner cannot survive a large natural flood, a long protracted drought, or toxic Pecos River water, even under well laid plans. If we should lose the shiner, it would be simpler to cancel water leases. Continuing the use of CPWA water would not be warranted. CID was never guaranteed a basic river flow. If we lost the blunt nose shiner, CID could release water from Lake Sumner in large flows as previously done.

04

This page intentionally left blank.

Responses To Comments

Document FED-1

Response to Comment 1: Comment noted.

Document State-1

Response to Comment 1: Comment noted. Like all Federal agencies, the actions of Reclamation are limited to those that they have authority to implement. Under NEPA, disclosure of the limits of the current legal authority of Reclamation is necessary. In complying with 40 Code of Federal Regulations (CFR) 1500.1(a), the DEIS includes actions that may be reasonable but are outside the legal jurisdiction of the lead agency, such as many of the water acquisition options developed by the Water Offset Options Group. Reclamation is committed to meeting the project purpose and need within its legal authorizations. Reclamation would also cooperate with the NMDGF or other agencies in ongoing and future measures to conserve the Carlsbad Project water supply and the shiner.

Document State-2

Response to Comment 1: Comment noted.

Document Tribal-1

Response to Comment 1: Comment noted.

Document IRR-1

Response to Comment 1: Comment noted. Reclamation agrees that a larger pool under certain conditions would provide more flexibility and management options to respond to river conditions. Reclamation is currently considering ways to beneficially increase the fish conservation pool.

Response to Comment 2: Comment noted. Reclamation recognizes that some water sources may not always be available and that some of the water sources identified on the Carlsbad Project water acquisition (CPWA) list will not be available when the water acquisition program is implemented. Reclamation will acquire whatever water is needed and available from willing sellers.

Attachment 1

Response to Comment 3: Comment noted and text changed.

Document IRR-2

Response to Comment 1: Comment noted. The referenced text has been clarified. Authorities, agreements, and regulatory requirements relevant to the DEIS are found in Chapter 1, Section 6, “Related and Ongoing Activities.” The alternatives were designed to have as little impact to New Mexico’s State-line deliveries as possible, either positive or negative. If the Carlsbad Project water is conserved, State-line deliveries should not be affected.

New Mexico Interstate Stream Commission is the joint lead agency and has responsibility to ensure compliance with New Mexico State water law and water right appropriation and to act in accordance with the State of New Mexico’s State-line delivery obligations to the State of Texas.

Response to Comment 2: Comment noted. Among the criteria used to screen water acquisition options was the amount of time required to implement. It was the judgment of the Water Offset Options Group that this option would require over 3 years to implement because of interstate Compact issues and because any benefits of forbearance in Texas to State-line delivery would still require a transfer of the water to where it would be beneficial to the Carlsbad Project water supply. Although option Z is on the “B” list, Reclamation and NMISC could still pursue implementation of this option with the cooperation of the State of Texas.

Response to Comment 3: Comment noted. In formulating and defining option Z, the Water Offset Options Group may not have considered all relevant subcategories and assumptions. Regardless of the need to negotiate a Compact amendment or whether water rights would be purchased or leased, it is believed that implementation would take longer than 3 years. If this option is needed, Reclamation and NMISC would work with the Pecos River Compact Commission and the Texas irrigation districts supplied by the Red Bluff Water Power Control District to address these issues.

Response to Comment 4: Impact analysis text has been reviewed to determine whether any additional analysis would be needed. Impacts to water quality are summarized in Chapter 3, Section 4, “Pecos River Basin Reservoirs,” and discussed in detail in Appendix 4, “Water Quality.” Cumulative impacts to this resource are addressed in chapter 5, table 5.2. In general, anticipated effects resulting from the alternatives on water quality are minor, would occur primarily north of Brantley Reservoir, and are more related to dry, wet, or average conditions than to any other factor.

Response to Comment 5: Reclamation and the NMISC have reviewed the DEIS. The impact analysis is believed to be adequate. The alternatives propose modest changes in flow rates as measured at gages at a great distance from Texas. Many of the water acquisition options are not sufficiently developed to provide detailed analysis and may require additional permitting, consultations, congressional authorization, and NEPA analysis.

Document ORG-1

Response to Comment 1: Comment noted. Reclamation and NMISC believe the DEIS fully complies with NEPA and ESA. The scope of the analysis focuses on Carlsbad Project water operations and measures that Reclamation can take to ensure that any discretionary action that it authorizes, funds, or carries out is not likely to jeopardize the shiner or result in the destruction or adverse modification of its critical habitat. Reclamation is keenly aware of the biological, hydrological, and other realities that limit water management on the Pecos River. In preparing the analysis, Reclamation and NMISC used technical workgroups consisting of experts from multiple agencies and backgrounds to ensure that the most recent biological and hydrological information was used in the analysis. These groups reviewed existing literature, conducted new field studies, and refined hydrological modeling. Although there is always uncertainty in predicting natural systems, Reclamation is confident that the best available data on the Pecos River was used in the analysis and that water acquisition options and the Adaptive Management Plan will ensure that the project purpose and need will be met.

Response to Comment 2: Comment noted. Reclamation and NMISC believe the DEIS fully complies with the authorities cited.

Response to Comment 3: Comment noted. Reclamation and NMISC have reviewed the DEIS and have determined that a supplemental DEIS is not necessary because the DEIS provides, “a full and fair discussion of significant environmental impacts and inform[s] decision makers and the public of the reasonable alternatives. . .” 40 CFR § 1502.1. The alternatives and the alternative development process are described in detail in Chapter 2, “Alternatives.” Chapter 2 also includes a description of the options which could be implemented for acquiring additional water. It is clearly disclosed that implementing many of these options may require additional permitting, consultations, authorizations, and NEPA analysis. The affected environment and environmental baseline are found in Chapter 3, “Affected Environment,” and the environmental impacts and mitigation measures are described in Chapter 4, “Environmental Consequences.” General or bounding impacts of implementing proposed water acquisition options are addressed to the extent that the particular actions can be defined. Additional supporting information can be found in the published technical appendices and various reports and documents in the administrative record. Based on these analyses, the DEIS conclusions and mitigation measures are sound.

Attachment 1

Response to Comment 4: Reclamation and NMISC have reviewed the DEIS and have determined that the DEIS fully analyzes the direct, indirect, and cumulative effects of the alternatives. Direct and indirect impacts are found in Chapter 4, “Environmental Consequences,” and cumulative impacts are described in Chapter 5, “Cumulative Impacts.”

Response to Comment 5: The economic, ecological, and cultural importance of the river has not been undervalued. Chapter 3, “Affected Environment,” and supporting technical reports describe the current conditions of the river and its importance to biological resources and to local communities and their economies. The project purpose and need recognizes the necessity of maintaining the social and economic benefits of the river and irrigated agriculture to communities, while providing flows to reduce intermittency, which is the greatest immediate threat to the shiner. Risks and impacts to all resources dependent on the river have been minimized in formulating and screening alternatives and water acquisition options. Although not specifically related to the operation of the Carlsbad Project, Reclamation participates and cooperates with other agencies and entities in river restoration actions, such as salt cedar removal, to the extent that it has authority, responsibility, and funding.

Response to Comment 6: Comment noted. Background information on water rights, Compact obligations, water operations, authorities, agreements, and regulatory requirements affecting the Pecos River are provided in Chapter 1, “Purpose of and Need for Action.”

Intermittency is the greatest immediate threat to the shiner. Historically, the worst intermittency events occurred in the late 1940s and early 1950s. Since 1998, Reclamation has bypassed Carlsbad Project water through Sumner Dam to avoid intermittency when water was available. Recent intermittency has been caused by legal diversion of water above the Acme gage and by the ongoing drought. The DEIS proposes alternatives and other actions to further reduce the risk of intermittency, especially in the upper critical habitat. The DEIS fully analyzes the effects of the proposed action and alternatives. Conserving the Carlsbad Project water supply is part of the project purpose and need. The continued implementation of the Carlsbad Project is not subject to Reclamation decisionmaking. Please see Chapter 1, Section 6, “Related and Ongoing Activities,” for authorities, agreements, and regulatory requirements relevant to the DEIS and to Chapter 2, Section 5, “Alternatives Considered But Not Analyzed in Detail.”

Response to Comment 7: The systematic process for developing and screening alternatives is summarized in chapter 2 and in supporting documents in the administrative record. Preliminary alternatives were formulated using public input, professional judgment, the most recent and best available research, and the recommendations of the technical workgroups. An alternatives development workgroup was formed with representatives and technical specialists from the

cooperating agencies to fully consider all concepts and suggestions in formulating alternatives. The final alternatives were the result of screening over 30 preliminary alternatives by the Hydrology and Biology Workgroups. Reclamation and NMISC do not purport to have fully analyzed the preliminary alternatives. Through this screening process, consensus was reached on many of the essential elements required to meet the goal of conserving the shiner and the Carlsbad Project water supply.

The final alternatives vary primarily by proposed target flows and gaging locations. The DEIS analyzes two alternatives which propose higher target flows at the Near Acme gage, and the No Action Alternative which would continue the present target (See Chapter 4, “Environmental Consequences.”) Higher targets at the Near Acme gage, similar to those referenced in the comment, were considered in some preliminary alternatives, but modeling indicated that water would not be available within the Pecos River system to sustain these higher target flows, leading to increased intermittency, which would be harmful to the shiner and would deplete the Carlsbad Project water supply.

Alternatives must address both conserving the shiner and conserving the Carlsbad Project water supply. Reclamation continues to consult with the Service under the ESA to ensure that any discretionary action that it authorizes, funds, or carries out is not likely to jeopardize the shiner or result in the destruction or adverse modification of its critical habitat. Any effects on the shiner of Reclamation’s discretionary actions will be removed or reduced to the extent that it has authority or responsibility. Reclamation cannot assume authorities it does not have to attempt species recovery but would continue to participate and cooperate with other agencies and entities in actions to benefit the shiner.

Response to Comment 8: Reclamation and NMISC disagree. The Service has determined that current Pecos River water operations are not likely to jeopardize the continued existence of the shiner and are not likely to destroy or adversely modify designated critical habitat.

The commenter is directed to chapter 4, where the differences in the anticipated impacts between the alternatives are described in detail. Intermittency is the most important biological indicator for the shiner. The DEIS makes it clear that modeled total intermittency would be similar to the No Action Alternative when using available bypass flows *only*. With the use of water acquisition options to augment base inflows and adaptive management, all of the action alternatives, except the Critical Habitat Alternative, would result in less risk of intermittency than the No Action Alternative.

The comparison of the modeled hydrological indicators shows that there are major differences between the alternatives in annual depletions to the Carlsbad Project, the additional water needed to meet target flows, and effects on Compact deliveries to Texas. These indicators refer directly to the project purpose and

Attachment 1

need of conserving the Carlsbad Project water supply and the sustainability of higher target flows in the context of limited water available for acquisition and the requirement to meet Compact obligations.

Response to Comment 9: Comment noted. Reclamation and NMISC disagree that the scope of the EIS is fragmented and that Reclamation is conducting connected or similar actions under NEPA that should be combined into a single EIS focusing on shiner recovery. Chapter 1, Section 6, “Related and Ongoing Actions,” describes the authorities, agreements, and regulatory requirements that determine and limit the scope of actions that Reclamation may undertake. Section 6 also discloses other activities being conducted by the co-lead agencies in the region. The impacts of these independent actions and those of other relevant past, present, and future projects regionally are considered in the DEIS in chapter 5 as cumulative effects.

The two ongoing planning activities referenced by the commenter are independent and differ in purpose and need, geographic location, and expected term of the actions. The purpose and need of the Carlsbad Project Water Operations and Water Supply Conservation DEIS is conserving the shiner while conserving the Carlsbad Project water supply. The purpose and need of the Long-Term Miscellaneous Purposes Contract EIS (MPEIS) is the request from NMISC for Reclamation to approve a contract to allow nonirrigation use of water rights in order to meet Compact obligations. The actions considered under the MPEIS would occur downstream from the current range of the shiner and are not anticipated to affect ESA compliance. The term of the contract contemplated under the MPEIS is 40 years, while actions proposed under the Carlsbad Project Water Operations and Water Supply Conservation DEIS would likely continue for less than 20 years. These planning processes are proceeding independently of each other, and decisions are not dependent on the outcome of the other planning process. Reclamation would continue to deliver Carlsbad Project water to Brantley Reservoir for use by CID. Some water acquisition options under consideration may contribute minor cumulative impacts if implemented in the same geographic area as NMISC's purchase and retirement of land. Consideration of the cumulative impacts of MPEIS is included in chapter 5.

The Fort Sumner Irrigation Project is addressed in Chapter 3, “Affected Environment.” The project is maintained and operated by the Fort Sumner Irrigation District, and no Federal actions are contemplated. The senior water rights of the FSID and other water users are also addressed in Chapter 1, “Purpose of and Need for Action.”

Document IND-1

Response to Comment 1: It is Reclamation’s responsibility to decide which alternative is chosen. In designating the preferred alternative for the DEIS and

Biological Assessment, Reclamation and NMISC, through the Executive Committee, considered eight criteria. Of these, "Likelihood of the Service Accepting the Alternative" was ranked sixth. Reclamation is consulting with the Service on a long-term Biological Opinion on Carlsbad Project operations; thus, it is appropriate to consider whether an alternative would be acceptable to the consulting partner.

Document IND-2

Response to Comment 1: Current leases or new actions to put water in the Pecos River above the Acme gage could be renewed or implemented at the discretion of the owners and Reclamation.

Response to Comment 2: Comment noted. The designated upper critical habitat for the shiner is located above the Acme gage, from the Taiban Creek confluence to Crocket Draw (see map 3.2). The DEIS does not include any proposal to change the designated critical habitat. Water acquired to augment flows in the river would be subject to losses that would be considered in implementing these options.

Response to Comment 3: Part of the project purpose and need is to conserve the shiner. Conserving the shiner means that Reclamation would ensure that any discretionary action that it authorizes, funds, or carries out is not likely to jeopardize the shiner or result in the destruction or adverse modification of its designated critical habitat. Threatened and endangered species conservation focuses on maintaining species within their current range. The shiner has only been collected in the main stem of the Pecos River. An alternative that does not conserve the shiner within the main stem of the Pecos River would not meet the project purpose and need and would be beyond the authority and responsibility of Reclamation to implement.

Flows in the Pecos River are more consistent than in the tributaries. While ensuring a small continuous flow may be possible, it is also not clear whether hydrologic conditions or the combinations of habitat types available in a tributary would provide the sufficient habitat features for all age classes of the fish to ensure conservation.

Response to Comment 4: Comment noted. Reclamation is considering both lease and purchase options from willing leasers or sellers. The shiner is currently a threatened, not endangered, species. While extinction is a possibility, it is the spirit of this EIS to benefit the shiner through the means available to Reclamation. Multiple agencies, including those with specific authority to attempt species recovery, would continue their actions long into the future.